IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 30/04/2003

Coram

The Honourable Mr. Justice V.S. SIRPURKAR
and
The Honourable Mr. Justice C. NAGAPPAN

W.A. No.1086 OF 2001

Alitalia Linee Aeree
Italiane, S.P.A. rep.
by its Deputy Administrative
Manager, Dalamal House
Bombay ... Appellant

-Vs-

1. Iqbal Y. Munshi

2. Deputy Commissioner of Labour
(Appeals) (Appellate Authority
under the TNSE Act) Madras ... Respondents

Appeal under Clause 15 of the Letters Patent against the
order dated 15-12-2000 made in W.P. No.17749 of 1993

!For Appellant :: Mr. A.L. Somayaji,
Senior Counsel for
Mr. T.K. Ramkumar

^For Respondents :: Mr. Karthik for
Mr. D. Venkatesan

:JUDGMENT

V.S. SIRPURKAR, J.

The present appeal is directed against the judgment of the
learned single Judge whereby the learned Judge has dismissed the writ petition
filed by the appellant. Appellant/petitioner is a corporate body, registered
in Italy and is an air-carrier of passengers and cargo all over the world.
Its head office for India is in Mumbai.

2. The first respondent was working as Resident Sales Manager
and he was in charge of Tamil Nadu, Kerala, Karnataka and Andhra Pradesh.

Prior to his posting as Resident Sales Manager, the respondent was working as District Sales Manager in n receiving certain complaints regarding the irregularities committed by the respondent as also the misconduct, the respondent came to be terminated by the petitioner by order dated 26-6-1991. Even before that, since there were complaints against him received by the petitioner's Head Office in Rome in Italy and since the respondent smelt about it, he had tendered his resignation on 25-3-1991 with effect from 1-6-1991. However, before the same could be accepted, he withdrew the said resignation. Ultimately, as has been stated earlier, his services came to be terminated by the letter dated 25-6-1991 with immediate effect. Needless to say with the termination letter, he was also given the salary for one month in lieu of notice.

3. The respondent challenged said termination by way of an appeal under Sec.41(2) of the Tamil Nadu Shops and Establishment Act (in short "the Act"), which was registered as T.S.E. Case No.36 of 1991. In that he complained that the termination was without giving any reasonable cause and also without finding him guilty of any misconduct and as such the order was in violation of Sec.41(1) of the Act. Along with the appeal, he filed certain documents which included one letter sent by him to the petitioner and three letters sent by the petitioner. This appeal was resisted on various grounds including the territorial jurisdiction. Even a civil suit came to be filed vide O.S. No.7 429 of 1991 for a declaration that the appellate authority under the Act had no jurisdiction to entertain the dispute. However, ultimately that civil suit came to be withdrawn. The petitioner by way of its additional written argument on merits also contended that the services were terminated on the basis of an oral complaint received by the petitioner from one of the travel agents from Madras and the allegation against him was of serious nature and since it was likely to affect the business and credibility of the petitioner in India, the petitioner had to terminate his service. The allegations were made that there were corruption charges against the respondent. While the matter was pending, the respondent also took up the position in his additional argument dated 29-9-1992 that since the allegation of misconduct had been levelled against the respondent and since no enquiry was made before terminating the respondent, the order of termination was bad in law. In their rejoinder submitted in November, 1992, the petitioner contended that they had moved the authority for allowing them to prove the misconduct committed by the respondent and for that purpose to allow to lead evidence. The petitioner was granted permission to adduce evidence. Challenging the said order, the respondent filed a writ petition, W.P. No.18738 of 1992, wherein this Court refused to interfere with the proceedings going on before the appellate authority. While disposing of the said writ petition, the court observed as follows:
"It is not proper for this Court to interfere at this stage. It is certainly open to the petitioner herein to challenge the procedure adopted by the first respondent if ultimately the petitioner is aggrieved by any order which is passed by the first respondent. It is not possible at this stage for this Court to go into the relevant facts and decide whether the first respondent has properly permitted the second respondent to adduce evidence or to give reasons for passing the order of termination."
Ultimately, the petitioner examined one witness who had made the complaint

against the respondent. He also proved the complaint which he had made in writing. The appellate authority, however, allowed the appeal. In the last paragraph of the order, the appellate authority mentioned as follows:
"It is established fact that the termination order is the result of a complaint given by a travel agent. It is a misconduct. But the misconduct is not proved by satisfactory evidence recorded at an enquiry held for that purpose. The cause for termination is also not stated in termination order. As the above prescribed procedure is not followed in dispensing with the services of the appellant, I set aside the order of termination dated 25-6-1991 of the management."

4. In short, though the appellate authority came to the conclusion that the termination of services was for the misconduct and though it had allowed the said misconduct to be proved by evidence led before it, it did not give any finding on the evidence led before it and set aside the order of termination on the short ground that no enquiry was held before issuing the order of termination. This order was challenged by the petitioner before the learned single Judge who also dismissed the writ petition, necessitating the present appeal.

5. Learned senior counsel, Shri A.L. Somayaji, appearing for the appellant has invited our attention firstly to the termination order as also to the pleadings by the parties before the appellate authority under the Act. Learned counsel was at pains to point out that though initially the appeal was resisted on the technical grounds of territorial jurisdiction as well as the power of the appellate authority to deal with the company like the appellant company, ultimately, the appellant had specifically alleged the misconduct on the part of the respondent by its written statement dated 17-9-1992. Learned counsel invited our attention to paragraph 3 of the said written statement which written statement was not only permitted to be filed but has been taken note of by the appellate authority while disposing of the appeal. Learned counsel points out that the appellant had received the complaints orally as well as in writing that the respondent had demanded bribes and had also accepted in order to favour a particular travel agency as against the others. Learned counsel further points out that the only defence raised to this was by way of a technical objection raised by the respondent on 29-9-1992 wherein the respondent pointed out that since the departmental enquiry had not preceded before the termination was effected on the ground of misconduct, the order was per se bad. Mr. Somayaji then takes us to the complaint received by the appellant and points out that the appellant had led the evidence of the witness who had filed the complaint and had also got proved the document through him viz. the complaint made against the respondent by the travel agency which complaint suggested the corrupt practices in which the respondent was engaged. Learned senior counsel also points out that though initially the respondent had opposed the leading of the evidence before the appellate authority itself, ultimately, by the order passed by this Court, the said evidence had gone on record though the respondent refused to cross-examine the said witness and take part in that enquiry. According to the learned senior counsel, this was nothing but an attempt on the part of the appellant to prove the misconduct at the stage of the appeal. He further points out that it was perfectly legal for the

employer to prove the misconduct before the appellate authority as the appellate authority has a specific power to allow evidence to be adduced and to record its findings thereupon independent of any departmental enquiry held by the employer.

6. In short, the contention is that if the appellate authority has power to ignore the findings in the departmental enquiry and to come to his own conclusion after permitting the parties to lead evidence before it then, the said authority must be deemed to have the powers to allow the employer to prove the misconduct for the first time in the appeal even if the employer has not held any enquiry whatsoever. For this proposition, learned senior counsel very heavily relies on the judgment of the Supreme Court in UNIT ED PLANTERS ASSOCIATION OF SOUTHERN INDIA v. K.G. SANGAMESWARAN AND ANOTHER (1997 -4- SCC 741).

7. Learned senior counsel further points out that though the appellate authority has given a finding that the termination is for misconduct yet the appellate authority has failed to apply its mind to the evidence adduced before it and that is how the appellate authority has fallen into the legal error of not appreciating the evidence or at any rate abdicating its jurisdiction to do so. Referring to the order of the appellate authority, learned senior counsel points out that the only reason given for allowing the appeal was not holding the enquiry before the termination was issued and not stating the misconduct as one of the reasons in the termination order.

8. As against this, Shri Karthik, learned counsel appearing on behalf of the respondent-employee very strenuously argued that in this case, the termination order was absolutely silent regarding the reasons for which the termination was effected. The learned counsel points out that the termination order is also silent about the misconduct and as such the order can be said to be without reason whatsoever. The learned counsel then relies on four decisions of this Court and contends that where there is a failure to give reason for termination, the order is non est. According to him, if the reason of termination on account of misconduct is not to be discerned in the termination order then the appellant could not be allowed even to lead evidence and/or to prove the misconduct at the appellate stage. According to the learned counsel that opportunity was lost for ever once a bald reasonless termination order was issued by the appellant-employer.

9. The real questions which, therefore, fell for consideration in this appeal are:

(1) Whether it was incumbent on the part of the appellant to state in the termination order that the termination was for misconduct?
(2) Having not stated the misconduct being the reason of the termination, could the employer prove that misconduct independently before the appellate authority and was the appellate authority bound to consider the reasons for the misconduct under the circumstances stated above? therefore,
(3) Was the appellate authority justified in not going into the evidence led before it of

misconduct?

10. To appreciate the controversy involved essentially the language of Sec.41(1) and (2) would have to be taken into consideration along with Rule 9(1) of the Tamil Nadu Shops and Establishment Rules (in short the Rules). A glance at that provisions suggests that the employer cannot dispense with the services of an employee except for a reasonable cause and ultimately without giving such person at least one months notice or wages in lieu thereof. Therefore, there are two basic conditions, viz. firstly, it is necessary that the dispensation with service must have a reasonable cause; secondly, it is necessary to give one months notice. The proviso to the section ordains that it will not be necessary to give one months notice where the termination is on account of the misconduct of the employee for which a prior enquiry has been held. subsection (2) then provides for the appeal.
11. To begin with, the decisions of the Division Bench of this Court are to the effect that where there is no reason in the termination order, the order becomes ineffective. Shri Karthik, learned counsel for the respondent very heavily relied on the decisions in The Tata Iron and Steel Company Limited case (1950 II LLJ 1043); Rallis India Limited, Madras v. Narasimha Rao and another (1991 II LLJ 505) and The Management of Air France v. The Deputy Commissioner of Labour and others (1996 II LLJ 210).

12. In the first mentioned reported decision, a view was taken that where the termination order was only on the ground of nonrequirement of the services, this could not be viewed as a reasonable cause. The Division Bench agreed that there was in fact no reasonable cause much less none which could be discerned from the language of the termination order.

13. In the second mentioned decision, the Court went on to hold that the disclosure of a cause or a reason in the order itself is a must since it is only then the appellate authority under Sec.41(2) of the Act could be in a position to see whether it is a case of simple discharge for a reasonable cause or for an alleged misconduct and further to see a proper domestic enquiry was conducted before passing the order of termination on the grounds of misconduct. The Court took the view that the statement contained in the order of termination that the Management had no further need for the services of the employee did not in law by itself constitute a reason. The Court further went on to hold that unless the management had also disclosed in the very order of termination the cause or the factor which made them to come to such a conclusion, the management could not be said to have disclosed the cause or reason for termination in the order in question. In the absence of disclosure of any cause or factor in the order of termination itself, which alone could be said to be the reason for the decision to terminate the services of the employee, there is absolutely no scope for the management to contend that the dispensing with the services of the employee was for a reasonable cause. The earlier mentioned decision in Tata Iron and Steel Company case was relied upon in this case. It is pertinent to note that in this case though no cause was shown in the order itself, at the stage of appeal it was tried to be justified by giving the reason that the termination

was on account of inefficiency in the performance of service and failure to improve the efficiency. An application was also filed to examine the witnesses in support of the merits of the case and justify the order of termination. The Court, however, took the view as we have indicated above.

14. In the third mentioned case, viz. Management of Air France case, the facts were that the employee therein came to be terminated in exercise of the powers under clause (8) of the regulations. The question which fell for consideration was whether such termination was valid in the light of the provisions contained in Sec.41(1) of the Act. The Division Bench observed that if the employee was in service continuously for a period of more than six months then his services should not have been terminated except for a reasonable cause. The Division Bench then went on to observe:

"In this case, we need not go into the question, whether such a reasonable cause, if it is not contained in the notice, can be proved by any evidence aliunde, because such is not the defence set up. Therefore, we have to go by the contents of the notice, which we have extracted in the earlier part of our judgment, and it does not contain any reason much less reasonable cause. That being so, the notice of termination is clearly violative of Section 41 of the Act. When the law prescribes that certain condition/s should be satisfied before exercising certain power or passing an order, such condition, become condition precedents, the non-compliance of the same would result in making that act itself invalid. Therefore, in the instant case, as the reasonable cause for termination is neither stated in the notice nor any material has been placed before us that there existed a reasonable cause, on the date when the notice of termination was issued to the deceased 2nd respondent. (However we should not be taken to have expressed finally as to whether it would be permissible to prove by evidence aliunde the existence of a reasonable cause in a case where the notice of the termination does not contain any reason because that has not been argued before us and that it is not the case of the appellant.) (emphasis ours).

All these three cases were heavily relied upon by Shri Karthik to suggest that if from the order of termination no reasonable cause for termination was discernible then the order must go and must be held to be without legs to stand. In this backdrop then came the celebrated decision of the Supreme Court in United Planters case, cited supra.

15. Learned senior counsel for the appellant very heavily relied on the decision in United Planters case, cited supra, in support of his argument that it is not necessary in each and every case to hold an enquiry before the termination and that such termination could be justified on the ground of misconduct even by adducing the evidence before the appellate authority under the Act. As a necessary corollary to this argument, learned senior counsel argues that it is for this reason that in each and every termination order, it need not be mentioned that it is on account of a misconduct. Learned senior counsel points out that in the aforementioned judgment, the Supreme Court has unequivocally held that the appellate authority has full jurisdiction to record evidence and to come to its own conclusion on the guilt of the employee concerned irrespective of the findings recorded in the domestic enquiry. Learned senior counsel invites our attention to the observations of the Supreme Court at the end of paragraph 20

to the following effect:

"In view of the wide jurisdiction of the appellate authority, it cannot be legally argued that the jurisdiction of the appellate authority to record evidence would be limited only to those cases where no evidence was recorded at the domestic enquiry and the principles of natural justice were violated. In addition to such cases, viz. the cases in which opportunity of hearing was not given to the employee or the principles of natural justice were in any way violated, the appellate court shall also have jurisdiction to record evidence if necessary in order to come to its own conclusion on the vital question whether the employee was guilty or not of the charges framed against him."

16. In United Planters case, the Supreme Court has made a reference to the cases under the industrial jurisprudence and in paragraph 11 has expressed:

"Before construing the provisions of Section 14 and Rule 9, it may be stated that it has always been the philosophy of Industrial Jurisprudence that if the domestic enquiry held by the employer was defective, deficient, incomplete or not held at all, the Tribunal, instead of remanding the case to the enquiry officer for holding the enquiry de novo, would itself require the parties to produce their evidence so as to decide whether the charges, for which disciplinary action was taken against the employee, were established or not." (emphasis ours)

The Supreme Court also made a reference to few cases under the labour jurisprudence for relying on this principle. A specific reference was made to the law laid down in Buckingham and Carnatic Co. Ltd. v. Workers of the Company (1952 Lab AC 490); Ritz Theatre (P) Ltd. v. Workmen (AIR 1963 SC 295); Kardah Company Limited v. Workmen (AIR 1964 7 19); Workmen v. Motipur Sugar Factory (AIR 1965 SC 1803); State Bank of India v. R.K. Jain (1972 4 SCC 304) and Delhi Cloth & General Mills Co. v. Ludh Budh Singh (1972 1 SCC 595). In these cases it was observed that where the employer failed to make an enquiry before dismissing a workman, it is open to him to produce all relevant evidence before the Tribunal to show that the action was justified. A reference was also made to Sec.11A of the Industrial Disputes Act, which was introduced by way of an amendment to the said Act and the court further found that in spite of the addition of Sec.11-A, the jurisdiction of the Tribunal still remained in tact to allow the evidence to be allowed by the parties for the first time before the Tribunal and the Tribunal could come to the independent conclusion on the basis of that evidence. For this, a specific reference was made to the decisions in East India Hotels v. Workmen (AIR 1974 SC 696); Cooper Engineering Limited v. P.P. Mundhe (AIR 1975 SC 1900); Ruston & Hornsby (I) Limited v. T.B. Kadam (AIR 1975 SC 2025).

17. It was on this backdrop that the provisions of Sec.41 of the Act and Rule 9 of the Rules came to be considered by the Supreme Court. In paragraph 18, the Supreme Court went still further and held that if the domestic enquiry was held ex parte or no evidence was recorded during this proceedings, the appellate authority was still justified in taking additional evidence to enable it to come to its own conclusion on the articles of charges framed against the delinquent officer. It is is on this backdrop that ultimately the observations, which we have quoted, came to be made in

paragraph 20. Thus, in the ultimate analysis the Court found that even if no domestic enquiry was held into the imputations made against the respondent, it was incumbent for the appellate authority to allow the parties to lead evidence. In our view, this broadening of the scope of enquiry would also make a major difference in the situation as regards the language of the order also.

18. It is true that in Tata Iron and Steel Company case, cited supra, the Division Bench of this Court came to the conclusion that a different type of misconduct not stated in the termination order could not be allowed to be proved at the enquiry under Sec.41(1) of the Act. There, the reasonable cause stated was "non-requirement of the services" of the employee. However, before the appellate authority the employer tried to make out a case of different kind of misconduct for the first time. The Division Bench, therefore, came to the conclusion that the employer cannot be allowed to plead any cause or reason not alleged in the order of dismissal in justification of their order. In that case, the situation was slightly different. Though a cause was stated in the order of non-requirement of the services of the employee, the Division Bench held that "different cause" could not be established. While in the present case, there is no cause or reason stated in the termination order. However, that was tried to be established in the enquiry.

19. The same line of thought was then continued in the decision in State Bank of Travancore v. Deputy Commissioner of Labour (1991 1 LLJ 393) where it was more positively stated that if the termination was to be on the ground of reasonable cause it was incumbent on the part of the employer to disclose a reasonable cause in the order of termination and in the absence of such disclosure it was not possible for the authority under Sec.41(2) to determine as to whether the grounds putforth by the employer can be stated to constitute a reasonable cause and as to whether the order of termination has been passed bona fide.

20. In Rallis India case, cited supra, both the earlier mentioned cases of Tata Iron and Steel Company case and State Bank of Travancore case were relied upon and the Court went on to observe that:

"... in the absence of disclosure of any cause or factor in the order of termination itself, which alone could be said to be the reason for the decision to terminate the services of the first respondent, there is absolutely no scope for the appellant to contend that the dispensing with the services of the first respondent was for a reasonable cause. Equally, there was no need or obligation cast upon the appellate authority to conduct a detailed enquiry into the undisclosed cause or the reasonableness of such a non-disclosed cause or permit or allow the production of any evidence at the appellate stage to disclose the reason as well as substantiate the reasonableness of the reason for the termination in question."

21. In Management of Air France case, cited supra, a slightly different note was struck by the Division Bench. The highlighted portion of paragraph 12 of that judgment, which we have quoted in the earlier part of this judgment, would clearly bring out the situation that the learned Judges did not consider the precise question which falls for consideration in this case because there was no such case set up before the Bench. The observations

which we have highlighted above would obtain this position. Again at the end of paragraph 12, the Division Bench sounded a note of caution to suggest that they should not to be taken to have expressed finally as to whether it would be permissible to prove by evidence aliunde the existence of a reasonable cause in a a case where the notice of the termination does not contain any reason because that was not argued before them and that was also not the case of the employer. It will be seen that till that time, there was no binding precedent by the Supreme Court suggesting that even if no enquiry was held prior to the dismissal, the parties could still offer evidence for the first time before the appellate authority meaning thereby, that in case of a misconduct the said misconduct could still be established for the first time before the appellate authority. This, in our opinion, has made all the difference now. If the employer can for the first time establish the misconduct before the appellate authority, it would mean that it can also suggest the reasonable cause or misconduct for the first time before the appellate authority.

22. Before the advent of the judgment in United Planters case, cited supra, this was not possible though in few cases referred to in United Planters case, the Supreme Court had held that the jurisdiction of the appellate authority under Sec.41(1) of the Act was wider than that of the Labour Court or the Industrial Tribunal under Sec.33 of the Industrial Disputes Act. Under the Industrial Disputes Act even if an order of discharge or dismissal is passed even without holding the departmental enquiry yet it is open to the employer to establish the misconduct independently for the first time before the Industrial Tribunal by setting up a case of misconduct as a defence to the application by the workman. In relying upon those principles, the Supreme Court has read those very principles in Sec.41(2) also. On this backdrop, we would like to consider the express language of Sec.41(1) of the Act also where it is suggested that dispensation of service has to be for the reasonable cause. It nowhere suggests that the said reasonable cause has to be stated in the order. Once the employee has been given a right to challenge his dismi ssal or termination as the case may be, he has to complain prima facie that his dismissal is not for the reasonable cause or for the misconduct. It is then for the employer to plead the misconduct of the employee as a reasonable cause. The ordinary law of master-servant does not require that every termination or dismissal must have a reasonable cause or for the misconduct. Undoubtedly Sec.41(1) comes by way of an exception to the ordinary law of master-servant. If that is so and if ultimately the law has come to this stage that a termination could be effected even without a prior domestic enquiry to enquire into the misconduct and that misconduct could be proved for the first time by offering evidence also for the first time in support of the misconduct before the appellate authority then, in our opinion, the termination order also can remain silent in respect of the reasonable cause or the fact that the termination is for misconduct. In our opinion, the judgment in United Planters case, cited supra, has practically dispensed with the requirement to state the reasonable cause or as the case may be the misconduct in the termination order. In all the earlier mentioned four cases by our High Court, a specific reference is made that the evidence could not be allowed to be adduced for the first time before the appellate authority. That law does not remain to be a good law in view of the Supreme Court s judgment

in United Planters case, cited supra. In Rallis India case, cited supra, the Division Bench specifically observed:

"Equally there was no need or obligation cast upon the appellate authority to conduct a detailed enquiry into the undisclosed cause or the reasonableness of such a non-disclosed cause or permit or allow the production of any evidence at the appellate stage to disclose the reason as well as to substantiate the reasonableness of the reason for the termination in question."

This situation, in our opinion, has undoubtedly changed because of the judgment of the Supreme Court in United Planters case, cited supra.

23. It will have to be taken into consideration that the United Planers case, cited supra, was decided on the basis of the cases under labour jurisprudence. It is, therefore, that we have tried to show that the principles applicable to the labour jurisprudence cannot be relied upon in the present case. In the Industrial Disputes Act, which is a beneficial legislation for the workmen, there is nothing to suggest that the dismissal should be by a written order. More often than not, the dismissals are oral inasmuch as the workmen are not just allowed to join the duty. In spite of that the view taken by the Supreme Court in a number of cases, to which reference has been made in United Planters case, cited supra, go on to hold that a defence of misconduct can be set up and the said misconduct can be proved even before the Tribunal. In the present case, we are not dealing with the labour jurisprudence. In fact, the respondent herein was in the managerial position. He cannot claim the same insulation as is available to an ordinary workman. In United Planers case also the concerned person was not a "workman" but an "accountant" and yet the Supreme Court came to the conclusion that the misconduct could be proved for the first time before the appellate authority independently of the findings of the enquiry, if held, and even if no enquiry is held, the said exercise could be done before the appellate authority. If under the beneficial legislation like the Industrial Disputes Act in case of an ordinary workmen also if the dismissal is brought about without holding an enquiry, the misconduct can be proved before the Tribunal then, there should be really no reason why in case of a better placed person than a workman such exercise should not be possible.

24. It can be seen in all the earlier quoted High Court decisions, there is a presumption that the dismissal order must be in writing. In the first place, there is no such requirement under Sec.41 of the Act that the dismissal order should be in writing. Like any labour jurisprudence, the dismissal could be even in oral. In that case, the ratio laid down in the above quoted High Court decisions would be of no consequence. Though ordinarily, this factor would have been an insignificant factor, in the backdrop of United Planters case, turning on labour jurisprudence, this factor will be a significant one - at least in the facts of the present case. Suppose, an employer, as in the present case, brings about the termination or dispensation of the service of an employee orally without passing any orders but for a reasonable cause and an appeal is filed against such action of dispensation of service – indeed such an appeal can be filed against any dispensation of service which need not be a written order – it would undoubtedly be possible for the employer to firstly admit that he has dispensed with the services of the employee and then to prove the reasonable

cause therefor. It cannot indeed be argued that such dispensation, if effected orally, is not appelable. The appeal is against the dispensation with the services necessarily not only against the order bringing about the dispensation with the services. For this reason also, the law laid down by the earlier quoted High Court decisions would have to be held to have been eclipsed by the judgment of the Supreme Court in United Planters case.

25. In this case, there can be no doubt that the respondent had the full idea as to the reason why he was terminated. In fact, he himself had resigned and then chosen to withdraw the same. On the heels of the withdrawal of that resignation, came the termination order. The justification for which was ultimately pleaded in the appeal when the appellant decided to challenge the termination order on merits rather than on the technicalities. When we see the order of the appellate authority, it is clear that he has given a specific finding that the termination was brought about for the misconduct on the part of the employee. He, however, refused to go into that question and skirted the same by holding that the said misconduct was not proved in the previous enquiry. That is the only reason why he proceeded to allow the appeal. In the wake of the law in the United Planters case, that was obviously not permissible. There was evidence allowed before him of the misconduct and he was bound to consider whether there was ny misconduct on the part of the respondent. The appellate authority not having done that, it would have been better had the learned single Judge instead of confirming the order remanded the matter to the appellate authority for reconsideration on that aspect. We would choose to do the same thing. However, we would direct that it shall be open for the parties to lead fresh evidence. The opportunity to cross-examine the witnesses would have to be given to both the parties and it will be thereafter for the appellate authority to consider whether firstly misconduct was committed by the employee and secondly, whether the employer was justified in taking the action that he did.

26. With these observations, we allow this appeal, set aside the order of the learned single Judge as also the appellate authority and direct the appellate authority to pass the fresh order in the light of our observations. No costs.

Index:Yes
Website:Yes

Jai

To:

Deputy Commissioner of Labour(Appeals)
 (Appellate Authority under the TNSE Act)
Madras